



THE ATTORNEY GENERAL
OF TEXAS

October 9, 1990

JIM MATTON
ATTORNEY GENERAL

Honorable Bruce Gibson
Chairman
Committee on Government Organization
House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-75

Dear Representative Gibson:

Chapter 152 of the Tax Code imposes a tax on the sale, rental, or use of motor vehicles in this state. Section 152.093 of the code exempts from the reach of the tax those motor vehicles purchased, used, or rented by child-care facilities licensed under chapter 42 of the Human Resources Code if the facility provides certain services.

You inform us that a certain child-care facility licensed under chapter 42 of the Human Resources Code that has entered into a contract with the Texas Department of Health to provide specified levels of child-care services has sought the tax exemption and that the office of Comptroller of Public Accounts has refused to grant it. The refusal was based upon uncertainty as to whether a licensed facility that agrees to provide by contract the specified services falls within the ambit of the exemption. Therefore, you ask us whether the specific child-care facility about which you are concerned is entitled to the section 152.093 exemption.

We do not resolve or determine issues of fact in the opinion process; rather, we construe statutory and constitutional provisions consistent with principles of statutory construction, issuing opinions on matter of law. The resolution of your question necessarily would require us to determine issues of fact. Therefore, we decline to answer your request.

Section 152.093 of the Tax Code provides:

(a) The taxes imposed by this chapter do not apply to a motor vehicle:

(1) purchased, used, or rented by a qualified residential child-care facility;
and

(2) intended for use primarily in transporting the children residing in the facility under a state license.

(b) In this section, "qualified residential child-care facility" means a child-care facility:

(1) licensed under Chapter 42, Human Resources Code, to provide residential care 24 hours a day to both:

(A) children who do not require specialized services or treatment; and

(B) children who are emotionally disturbed; and

(2) in which children of both classifications listed in Subdivision (1) are permitted by the license to live together in a single residential group. (Emphasis added.)

You inform us that a child-care facility licensed under chapter 42 of the Human Resources Code has contracted with the Texas Department of Human Services to provide certain levels of child-care services. The services that the facility has contracted to provide fall within specific definitions approved by the Texas Health and Human Services Coordinating Council¹ setting forth the recommended levels of service for residential care.²

1. Chapter 131 of the Human Resources Code governs the creation and specifies the duties of the Texas Health and Human Services Coordinating Council. The council is authorized to, inter alia,

provide advice to agencies, organizations and governmental entities concerning the analysis of needs and the development, evaluation, and coordination of health and human services. (Emphasis added.)

Hum. Res. Code § 131.004(a)(7).

2. Subsection (a) of section 41.027 of the Human Resources Code provides:

(Footnote Continued)

The definitions recommended by the council set forth six different levels of care to be provided, depending upon the needs of the individual child. Thus, Level I requires the provision of more routine care and supervision for children deemed "normal," while Level VI requires the provision of constant care and supervision for children deemed severely impaired or disabled. The child-care facility about which you are concerned has entered into a contract to provide care corresponding to Levels I through Level IV.

A child determined to fall within Level I is described as follows:

Adequate functioning in all developmental and/or environmental areas. There may be transient difficulties, "every-day" worries, and occasional misbehavior, but [sic] would be regarded as a 'normal' child; responds to 'normal' discipline. The caregiver provides routine home environment with guidance and supervision to meet the needs of the child.

The service needs of a child that falls within this level are defined as follows:

Children and adolescents at this level of care need an environment that provides maintenance and ensures emotional and physical well-being in a family-oriented setting.

The provisions regarding therapeutic interventions for this level of care state:

The caregiver provides consistency, reassurance, regular parenting and activities designed to develop normalized social skills.

The highest level of care that the child-care facility about which you are concerned agreed to provide is Level IV. Children determined to fall within Level IV are described as follows:

(Footnote Continued)

The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care developed and adopted by the Texas Health and Human Services Coordinating Council.

Substantial problems; have physical, mental, or social needs and behaviors that may present a moderate risk of causing harm to themselves or others, poor or inappropriate social skills, frequent episodes of aggressive or other antisocial behavior with some preservation of meaningful social relationships. Require treatment program in a structured supportive setting with therapeutic counseling available by professional staff.

The service needs of a child determined to fall within Level IV are defined as follows:

Children and adolescents at this level of care have physical, mental, and emotional needs and behaviors that may present a low to moderate risk of causing harm to themselves or others. They require physical environments and treatment programs in which most activities are therapeutically designed to improve social, emotional and educational adaptive behavior. These children may require psychological or psychiatric services which are integrated into the residential program to assess and monitor admission, discharge, and treatment plans.

The provisions regarding therapeutic interventions state:

The caregiver provides therapeutic interventions within the milieu designed to improve the child's functioning. The caregiver provides formalized behavioral programs implemented by professional staff, and formalized interactions between professional staff and children, such as individual, group, and family therapy.

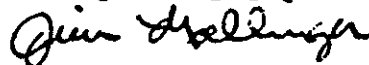
The only language of section 152.093 of the Tax Code that acts to limit the granting of the exemption to facilities offering certain types of care is the language found in subsection (b) that defines "qualified residential child-care facility." A qualifying facility must be licensed to provide residential care 24 hours a day to both:

(A) children who do not require specialized services or treatment; and

(B) children who are emotionally disturbed.

The issue is whether a child-care facility that agrees to provide child-care services at Levels I through IV is providing services to "children who do not require specialized services or treatment" and to "children who are emotionally disturbed." The Tax Code itself does not define the scope of those phrases. The legislative history of section 152.093 of the Texas code is not helpful either. Bill Analysis, H.B. 3146, 71st Leg. (1989). There is no indication that the Tax Code amendment was enacted with the council-recommended levels of care in mind. And finally, the phrases are nowhere defined in the Human Resources Code or in rules promulgated pursuant to the code. Thus no legal authority allows us to determine as a matter of law the definition or scope of the Tax Code limitation on the granting of the exemption. Because we do not resolve or determine issues of fact in the opinion process, we are unable to answer your request.

Very truly yours,



Jim Moellinger
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RG/SW/JM/mc

Ref.: RQ-1816
ID# 7581